

**Mr Pogiso Modise, MP**

Acting Chairperson of the Portfolio Committee on Environment, Forestry and Fisheries

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**Copied to:**

**Ms Tyhileka Madubela**

Secretary of the Portfolio Committee on Environment, Forestry and Fisheries

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1 November 2022

Dear Honourable Modise and Honourable Committee Members

### **URGENT NEED TO PROMULGATE THE CLIMATE CHANGE ACT**

1. We, the undersigned parties, wish to place on record our concern at the slow progress and apparent lack of urgency with which the Climate Change Bill 2022 (“The Bill”) law-making process, as overseen by the Portfolio Committee on Environment, Forestry and Fisheries (“the Committee”), is proceeding.
2. The long-awaited and much needed Climate Change Act is intended to be an essential and foundational instrument enabling an effective, just and science-based response to the climate change crisis. We are already experiencing costly and deathly impacts from climate change, and all credible science confirms that these impacts will intensify.
3. It is now over four years since a first draft Climate Change Bill was published for comment, and almost eleven years since the adoption of the Climate Change Response White Paper. In the meantime, the urgency for decisive action has escalated and continues to do so. The House Chairperson: Committees, ICT and Oversight has recently referred to climate change as an emergency, and we can therefore assume that Parliament would and should endorse an appropriate response befitting of an emergency.
4. Globally, our greenhouse gas (GHG) emissions in 2030 need to be 43% lower than they were in 2019. Even when we apply a fair share<sup>1</sup> adjustment as is outlined in our 2021 Nationally Determined Contribution (NDC) update, South Africa - along with all other nations - needs to undertake a steep and decisive emissions reduction trajectory.
5. We contend that this essential mitigation action will not be achieved without effective compulsory legal mechanisms compelling GHG emissions reduction. At this point in time, the only such mechanism envisaged by the legislature is the intended levying of a higher carbon tax rate on GHG emissions that exceed a carbon budget. Carbon budgets are established in terms of the Bill, and until it becomes a Climate Change Act, and the necessary regulations are enacted, we are in a regulatory vacuum as far as climate mitigation is concerned.

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<sup>1</sup> ‘Fair Share’ refers to an adjustment to a country’s contribution to global mitigation efforts, and is based on historical accountability for GHG emissions, as well as capabilities and developmental needs. South Africa’s NDC relies on the Climate Equity Reference Project calculations. See more at <https://climateequityreference.org/>

6. Further, the Bill must be strengthened to make the exceeding of a carbon budget an offence and subject to administrative penalties, in addition to criminal sanctions. In October 2022, one of South Africa's largest GHG emitters told the Committee that emitters might find themselves choosing to exceed their allocated carbon budgets and pay a higher carbon tax rate on excessive emissions. We cannot have a situation where emitters can elect to avoid actual emission reduction in this way, given the harmful effects of such emissions and the resulting limitation on a number of constitutional rights.<sup>2</sup>
7. Unless there are strong disincentives for polluters drastically to reduce GHG emissions on a 1.5°C-aligned timeframe, evidence suggests that they will not do so. We see sophisticated anti-climate lobbying and extensive greenwashing which is likely to continue, with an outcome that emissions will continue to rise.
8. The flooding in KwaZulu-Natal (KZN) in April this year is the most recent reminder that we need to accelerate an integrated, effective and well-governed climate adaptation response. Again, the Bill is a foundational law that creates the necessary obligations and institutional arrangements that enable South Africa to plan and respond to the climate change effects that are no longer avoidable.
9. Once enacted, the Bill would create added certainty in the market as far as investment in decarbonisation activities is concerned. It will also strengthen the basis on which to proceed with a just transition that, among other things, will protect vulnerable workers who stand to be impacted by decarbonisation measures.
10. We therefore call on the Committee to:
  - 10.1. Demonstrate a renewed commitment to achieving the promulgation of an effective Climate Change Act with sufficient urgency;
  - 10.2. Set a target date for promulgation of the Bill that adequately accommodates the necessary legal process, including the required processes as overseen by the National Council of Provinces, and ensuring meaningful public participation;
  - 10.3. Provide a meaningful response to the substantive input submitted by stakeholders seeking to advance social and climate justice and allow for strengthening the Bill as far as is possible without disrupting the current path to adoption; and
  - 10.4. Adopt and pro-actively communicate a process timeline and drive a timely conclusion of deliberations.
11. The nature of the climate crisis is such that the longer the delay in executing the necessary climate response measure, the more difficult it becomes to address, mitigate and adapt to the

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<sup>2</sup> Including the right to an environment not harmful to health or wellbeing and the right to have the environment protected for the benefit of present and future generations (s24, the Constitution); the right of access to water (s27, the Constitution); the rights of human dignity (s10, the Constitution); equality (s9, the Constitution); and the rights of children (s28, the Constitution) – which confirms that the best interests of the child are the most important consideration.

scale of the crisis and we urge the Committee to take the required action urgently and effectively. The crisis presents us with unprecedented social, economic and environmental challenges and requires an extraordinarily urgent and dedicated response from Parliament in fulfilling its legislative role.

Yours faithfully

African Centre for Biodiversity  
African Climate Alliance (ACA)  
African Climate and Development Initiative (ACDI)  
African Climate Reality Project  
Alternative Information and Development Centre (AIDC)  
Association for Rural Advancement (AFRA)  
Biodiversity Law Centre  
Biowatch South Africa  
Centre for Applied Legal Studies (CALS)  
Centre for Child Law  
Centre for Environmental Rights (CER)  
Climate Champions for Adaptation Project Collective  
Climate System Analysis Group  
Debt for Climate South Africa  
Environmental Monitoring Group (EMG)  
Extinction Rebellion Gauteng (XR Cape Town)  
Extinction Rebellion Gauteng (XR Gauteng)  
Extinction Rebellion – Nelson Mandela Bay (XR NMB)  
The Green Connection  
Greenpeace  
groundWork  
Indigo Development and Change  
Institute for Economic Justice (IEJ)  
Just Share  
Land Network National Engagement Strategy of South Africa (LandNNEs)  
Laudato Si Movement (LSM)  
Mathekga Foundation  
Project 90 by 2030  
South African Faith Communities Environment Institute (SAFCEI)  
Section 27  
United Front (UF)  
Waterberg Women's Advocacy Organisation  
Women's Leadership & Training Programme  
350Africa



